

Department of Energy

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to be in violation of any provision of these regulations, OFE may issue a notice of violation stating, in writing and with reasonable specificity, the nature of the violation. An enforcement proceeding commences with the issuance of a notice of violation.

(b) *Contents of the notice of violation.* OFE will set forth in the notice of violation the nature of the violation, the relevant facts that OFE believes establish the violation and the legal basis for the conclusions reached therein. OFE may also include with the notice of violation a copy of a proposed order. The notice of violation will also state whether or not OFE proposes to assess civil penalties.

(1) If OFE proposes to assess a civil penalty, a notice of violation will be issued to the violator with an opportunity for a hearing before an Administrative Law Judge, as set forth in § 501.166(a)(1) of this part, before any final determination on the violation and penalty are made by OFE. The recipient of the notice will also be informed of his right to elect to have the procedures of § 501.166(a)(2) apply, in lieu of the hearing, with respect to a final determination on the assessment of any civil penalty.

(2) If OFE does not propose to assess a civil penalty, the violator will be provided the opportunity for a conference, as set forth in § 501.166(b), before a final determination on the violation is made by OFE. OFE may, in its discretion, also provide the violator an opportunity for a hearing pursuant to § 501.166(a)(1).

(c) *Service.* OFE will serve the notice of violation in accordance with provisions set forth in § 501.6.

(d) *Rescission.* If, after issuance of a notice of violation and any related investigation, OFE finds no basis for the belief that a violation has occurred, is continuing to occur, or is about to occur, OFE may rescind the notice of violation by giving written notice to that effect to the recipient.

§ 501.166 Hearings and conferences.

(a) *When a civil penalty is proposed.* (1) *Hearing alternative in civil penalty assessment proceedings.* Unless the recipient of a notice of violation elects in writing to have the provisions of para-

graph (a)(2) of this section apply, OFE will commence a proceeding to assess a penalty and, prior to a final determination on the violation and assessment of a penalty, provide an opportunity for a hearing pursuant to 5 U.S.C. 554 before an Administrative Law Judge.

(2) *Election alternative in civil penalty assessment proceedings.* The recipient of a notice of violation in which a civil penalty assessment has been proposed may elect, in writing, within thirty (30) days of receipt of the notice, to waive the administrative proceedings described in paragraph (a)(1) of this section. OFE will make a determination on the proposed civil penalty assessment and issue a final order to that effect within forty-five (45) days after receiving notice of the exercise of this election.

(b) *When a civil penalty is not proposed—opportunity to request a conference.* If a person has received a notice of violation in which a civil penalty has not been proposed, he may, within thirty (30) days after receipt of the notice, request a conference with OFE to discuss the notice. In order to request a conference he must comply with the instructions set forth in the notice.

§ 501.167 Fuel use order.

(a) *General.* OFE will issue a Fuel Use Order if, after considering all the information received during the proceeding, OFE determines that a person has committed, is committing, or is about to commit a violation of FUA or of an order or rule thereunder.

(b) *Contents.* Any Fuel Use Order issued under this section shall set forth the relevant facts and legal basis for the order and where appropriate, the final penalty assessment and the basis therefor. When an administrative hearing is requested under § 501.166(a) of this part, the Fuel Use Order will include the recommended findings and conclusions of the Administrative Law Judge (ALJ) and the basis for the penalty assessment. OFE will make a final determination as to any penalty assessment or other appropriate remedy based upon the recommended findings and conclusions of the ALJ and other information in the record of the enforcement proceeding. The order will

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be effective upon service, unless otherwise provided therein, or stayed pursuant to § 501.120.

(c) *Service.* OFE will serve a copy of the Fuel Use Order upon any person who was served a copy of the notice of violation and upon all parties to any public proceeding on the notice of violation. OFE will place a copy of each final order on file in the Public Information Office described in § 501.12.

(d) *Judicial review.* Any person against whom a penalty is assessed pursuant to § 501.167(b) after a hearing before an ALJ may, within sixty (60) calendar days after the date of issuance of the order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with the provisions of section 723 of FUA.

Subpart L—Investigations, Violations, Sanctions and Judicial Actions

§ 501.180 Investigations.

(a) *General.* Pursuant to section 711 of FUA, the DEOA, and in accordance with the provisions of 10 CFR 205.201, OFE may initiate and conduct investigations relating to the scope, nature, and extent of compliance by any person with the rules, regulations, and orders issued by OFE under the authority of the Act, or any order or decree of court relating thereto, or any other agency action. When the circumstances warrant, OFE may issue subpoenas as provided in subpart D of this part. OFE may also conduct investigative conferences in conjunction with any investigation.

(b) Any duly authorized representative of OFE has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation.

(c) *Notification.* If any person is required to furnish information or documentary evidence pursuant to a subpoena or special report order, OFE will, upon written request, inform that person as to the general purposes of the investigation.

(d) *Confidentiality.* OFE shall not disclose any information received during

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an investigation under this section, including the identities of the person investigated and any other person who provides information, to the extent it is exempt from public disclosure pursuant to 5 U.S.C. 552 and 10 CFR part 1004.

§ 501.181 Sanctions.

(a) *General.* (1) A violation of any provision of the Act (other than section 402 of FUA), or any rule or order thereunder shall be subject to the penalties and sanctions provided in subtitle C of title VII of FUA.

(2) Each day that any provision of the Act (other than section 402), or any rule or order thereunder is violated constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) *Criminal penalties.* Any person who willfully violates any provision of the Act (other than section 402), or any rule or order thereunder will be subject to a fine of not more than \$50,000, or to imprisonment for not more than 1 year, or both, for each violation.

(c) *Civil penalties.* (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed \$27,500 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to \$3.30 for each MCF of natural gas or up to \$11 for each barrel of oil used in excess of that authorized in the exemption.

(2) OFE may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) *Corporate personnel.* (1) If a director, officer, or agent of a corporation willfully authorizes, orders, or performs any act or practice constituting in whole or in part a violation of the Act, or any rule or order thereunder, he will be subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. He will not, however, be subject to imprisonment under paragraph (b) of